
REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on June 30, 2003, and the references cited therewith.

Claims 2, 19, 21, 28, 30, 31, 33 and 37 are amended, claims 9-18 and 25-26 are cancelled if not considered already to have been cancelled, and claims 41-42 are added; as a result, claims 1-7, 19-24, 27-35 and 37-42 are now pending in this application.

In the Amendment and Response filed April 30, 2003, on page 10 line 18, Applicant indicated that claims 9-18, 25, and 26 were cancelled. Further, in the Final Office Action dated June 30, 2003, the Examiner did not indicate that claims 9-18, 25, and 26 were withdrawn, and thus these claims appear to have been cancelled, not withdrawn.

§112 Rejection of the Claims

Claim 40 was rejected under 35 USC § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant respectfully traverses, and respectfully submits a first distribution mechanism driven in a reciprocating motion, as recited in claim 40, is shown and described for example, by Figures 3A and 3C and page 9, lines 5-7 of the specification. Reconsideration and allowance of claim 40 are respectfully requested.

§102 Rejection of the Claims

Claims 19, 21, 22, 24, 27-35, 37 and 38 were rejected under 35 USC § 102(b) as being anticipated by Rasmussen et al. (4,310,036). Applicant respectfully traverses. Applicant cannot find in the applied reference, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and *substantially only toward an upper portion of the tunnel cavity* during operation of the primary compression mechanism, as presently recited in claim 19 and incorporated in claims 21, 22, 24 and 38. Rasmussen provides a tunnel cleanout mechanism that pushes feed from the entire tunnel, rather than compressing feed in the upper tunnel so that more feed can be pushed there by the primary compression mechanism. Further,

Rasmussen cannot operate their cleanout mechanism during operation of the primary compression mechanism, since feed would wedge behind the plate in its pushed-out position, preventing it from withdrawing, preventing feed from extruding into the bag, and defeating its purpose.

Furthermore, Applicant cannot find in the applied reference, for example, means for displacing pressure within the tunnel from above the primary compression mechanism to a higher portion of the tunnel interior cavity during operation of the primary compression mechanism, as recited in claim 37 and incorporated in claims 27-35. Furtherstill, Rasmussen cannot operate their cleanout mechanism during operation of the primary compression mechanism, as stated above, since feed would wedge behind the plate in its pushed-out position, preventing it from withdrawing, preventing feed from extruding into the bag, and defeating its purpose.

Claims 19, 21, 22, 24, 27-35, 37 and 38 appear to be in condition for allowance, and reconsideration and withdrawal of the rejections are respectfully requested.

§103 Rejection of the Claims

Claims 20 and 23 were rejected under 35 USC § 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goar (3,881,407). Applicant cannot find in Rasmussen or Goar, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and *substantially only toward an upper portion of the tunnel cavity* during operation of the primary compression mechanism, as presently recited in claim 19 and incorporated in claims 20 and 23.

Furthermore, Applicant traverses the rejections because the applied reference does not identify a proper motivation to modify or combine Rasmussen with Goar. According to M.P.E.P. § 2143.01, the mere fact that references *can* be modified does not render the resultant combination obvious unless prior art also suggests (i.e. a prior art supported, objective suggestion) the desirability of the modification. Pursuant to M.P.E.P. § 706.02(j), “[t]he initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has done.” See also *In Re San Su Lee*, 277 F.3d 1338 (CAFC 2002). Applicant

respectfully submits that the evidence of record does not appear to identify an objective source for the motivation to combine Rasmussen and Goar in the manner proposed. The Examiner has not stated how Rasmussen or Goar establishes that it would be in need of, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and substantially only toward an upper portion of the tunnel cavity during operation of the primary compression mechanism as recited in claim 19 and incorporated in claim 20 and 23. Applicant cannot find any suggestion in Rasmussen to employ such a component. Applicant respectfully requests the Examiner identify an objective source for the motivation to modify the applied reference in the manner proposed. Alternatively, it appears, the requisite motivation for modifying Rasmussen with Goar is lacking, and therefore, proper *prima facie* obviousness has not been established.

Moreover, Applicant again traverses the Official Notice taken in the Office Action at page 4, last paragraph. Pursuant to M.P.E.P. § 2144.03, Applicant respectfully requests a reference showing a secondary compression mechanism located on the exterior of the feed tunnel and extending into the feed tunnel *above the primary compression mechanism*, as recited in claim 20. Further, Applicant also requests a reference showing a hinged apparatus that protrudes outward of the feed tunnel wall at the non-compacting stage and extending inward into the feed tunnel at the compacting stage *above the primary compression mechanism*, as recited in claim 23. Alternatively, Applicant submits the assertions made are unsupported by the reference and therefore are within the personal knowledge of the Examiner. Applicant requests an affidavit supporting the unsupported assertions as required by 37 CFR 1.104(d)(2), or removal of the unsupported assertions.

Claims 20 and 23 appear to be in condition for allowance, and reconsideration and withdrawal of the rejections are respectfully requested.

Claim 39 was rejected under 35 USC § 103(a) as being unpatentable over Rasmussen et al. (4,310,036). As stated above, Applicant cannot find in the applied reference, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and

substantially only toward an upper portion of the tunnel cavity during operation of the primary compression mechanism, as presently recited in claim 19 and incorporated in claim 39.

Claim 39 appears to be in condition for allowance, and reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-3 and 40 were rejected under 35 USC § 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086). Applicant cannot find in Rasmussen or Goth, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and *substantially only toward an upper portion of the tunnel cavity* during operation of the primary compression mechanism, as presently recited in claim 19 and incorporated in claims 1-3 and 40.

Claims 1-3 and 40 appear to be in condition for allowance, and reconsideration and withdrawal of the rejection is respectfully requested.

Claim 4 was rejected under 35 USC § 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086). As stated above, Applicant cannot find in Rasmussen or Goth, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and *substantially only toward an upper portion of the tunnel cavity* during operation of the primary compression mechanism, as presently recited in claim 19 and incorporated in claim 4.

Claim 4 appears to be in condition for allowance, and reconsideration and withdrawal of the rejection is respectfully requested.

Allowable Subject Matter

Applicant acknowledges the allowance of claims 5-7.

Claim 33 was objected to but was indicated to be allowable. Applicant has rewritten claim 33 in independent form including the limitations of the base claim and intervening claims.

New claims 41-42 have been added to more fully describe the claimed invention.

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT

Serial Number: 09/977036

Filing Date: October 11, 2001

Title: AGRICULTURAL BAGGER WITH UPPER TUNNEL COMPACTION AND CHUTE AGITATION

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Dkt: 671.003US1

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (952) 278-3501 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 502931.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O.Box 1450, Alexandria, VA 22313-1450, on this 28th day of December, 2003

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